

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



April 7, 2003

Agenda ID #2056

**TO: PARTIES OF RECORD IN APPLICATION 02-05-004 AND
INVESTIGATION 02-06-002**

This is the draft decision of Administrative Law Judge (ALJ) Wetzell. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

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Attachment

Decision **DRAFT DECISION OF ALJ WETZELL** (Mailed 4/7/2003)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U 338-E) For Authority to, Among Other Things, Increase Its Authorized Revenues For Electric Service in 2003, And to Reflect That Increase in Rates.

Application 02-05-004
(Filed May 3, 2002)

Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Southern California Edison Company.

Investigation 02-06-002
(Filed June 6, 2002)

OPINION ON MOTION FOR MEMORANDUM ACCOUNT**1. Summary**

Southern California Edison Company (SCE) is authorized to establish a memorandum account to track the base rate revenue requirement that it has requested in this application during the period between May 22, 2003 and the date a final decision on that request is adopted in this proceeding. For any test year 2003 revenue requirement adjustment that may be authorized in this proceeding, and subject to further order of the Commission addressing the disposition of the memorandum account, this authorization provides SCE an opportunity to receive the portion that corresponds to the tracking period. This authorization does not bind the Commission to grant the requested revenue requirement, or any portion thereof, as such a grant can only be made upon the

development of a complete evidentiary record, and full and fair consideration of the record by the Commission.

2. Background

SCE filed this application to increase its authorized test year 2003 base rate revenues on May 3, 2002. In the application, SCE seeks authorization for revenues of approximately \$3.1 billion dollars, to become effective as soon as possible in 2003. The requested amount represents an increase of \$286 million (10.3%) above the currently authorized base rate revenues.

Under the 384-day processing timeline included in the Rate Case Plan adopted in Decision (D.) 89-01-040, a final Commission decision on SCE's requested base rate revenue requirement would be expected by May 22, 2003.¹ However, in this proceeding the Office of Ratepayer Advocates (ORA) requested an extension of time to submit its testimony. On August 8, 2002, Assigned Commissioner Wood issued a ruling (ACR) that, among other things, granted ORA a three-month extension.² The ACR correspondingly moved other procedural milestones by three months, including the expected date for a final Commission decision.

In response to this extension of the Rate Case Plan schedule, SCE filed a motion requesting authorization to establish a memorandum account to track the

¹ D.89-01-040 provides that the final revenue requirement decision is expected 384 days after the application is filed, and that any revenue increase or decrease will become effective by January 1 of the test year. 30 CPUC 2d 576, 598, and 605. As applicable to SCE, D.93-07-030 modified the Rate Case Plan in certain respects but did not change the 384-day expected date for the final revenue requirement decision. 50 CPUC 2d 354.

² *Assigned Commissioner's Ruling Establishing Scope, Schedule, And Procedures For Proceeding*, dated August 8, 2002.

revenue requirement requested in this application during the period between May 22, 2003, the date that a final decision would be expected under the Rate Case Plan, and the date a final decision is adopted in this proceeding. Aglet Consumer Alliance (Aglet) filed a timely response to SCE's motion. Aglet does not object to the establishment of a memorandum account for the purpose of tracking the requested revenue requirements. However Aglet does object to what it describes as SCE's request for guaranteed rate recovery.

3. Discussion

Underlying SCE's request is the objective to offset the financial consequences of the difference between the date the Commission adopts its final decision in this proceeding and the date that the decision would have been expected under the Rate Case Plan. According to SCE, a memorandum account that becomes effective May 22, 2003 would accomplish that objective. As highlighted in Aglet's response, and as explained in SCE's motion, SCE is asking for more than just a memorandum account. The company also seeks approval of rate recovery of any undercollection that might be recorded in the account:

SCE is moving the Commission for authority to establish a [General Rate Case (GRC)] Revenue Requirement Memorandum Account (GRC RRMA) with an effective date of May 22, 2003. During the period between May 22, 2003 and the date of a final Commission decision in this proceeding, SCE would track in the GRC RRMA the recorded or authorized GRC-related revenue requirements reflected in the various Commission-approved ratemaking mechanisms. When the Commission adopts its 2003 GRC decision (which Commissioner Wood's Ruling has scheduled for August 21, 2003), SCE would determine the balance (*i.e.*, over- or undercollection) in the GRC RRMA by comparing the authorized GRC revenue requirement to the revenue requirement recorded in the GRC RRMA. If the final 2003 GRC

decision were to be issued during the [Procurement Related Obligations Account (PROACT)] Rate Repayment Period, the balance in the GRC RRMA (whether over- or undercollected) would be transferred to the Settlement Rates Balancing Account. [Footnote omitted.] If the decision were to be issued after the PROACT Rate Repayment Period, the balance in the GRC RRMA would be recovered from customers through applicable rate components, similar to the recovery of the adopted GRC revenue requirement. (Motion, pp. 4-5.)

We consider here SCE's entire proposal, as described in the foregoing passage, not merely the request to establish a memorandum account. Before we rule on the proposal, we address two preliminary matters.

We first observe that the Rate Case Plan adopted in D.89-01-040, as modified from time to time, sets forth the Commission's expectations for the processing of energy utility ratemaking matters. Among other things it signifies the Commission's intention to avoid or at least minimize regulatory lag and the financial consequences that delays in processing complex rate proceedings can have upon utilities and ratepayers. However, the Rate Case Plan is not an entitlement that guarantees utilities immunity from any adverse effects of procedural delays. If circumstances require, it may be reasonable and appropriate for the Assigned Commissioner and the Presiding Officer to pursue a procedural schedule that departs from strict adherence to the Rate Case Plan.

As noted earlier, D.89-01-040 provides that any revenue increase or decrease adopted in a rate case will become effective by January 1 of the test year. Significantly, SCE has not proposed that the relief it seeks in the instant motion become effective on January 1, 2003. Instead, it requests an implementation date of May 22, 2003. We take this to be recognition by SCE that the specific terms of the Rate Case Plan are not binding upon the processing of a

particular case. We also take this to be recognition by SCE that it would be unreasonable to provide for an implementation date of January 1, 2003, when SCE tendered the application more than five months after the date that a 384-day processing schedule could have resulted in a decision prior to January 1, 2003.

Second, we affirm the Assigned Commissioner's decision to provide ORA with additional time to prepare its showing in this case. We expect ORA to provide us with critical analysis in cases that have significant consumer impact. Moreover, the Commission has an affirmative statutory obligation to provide for the assignment of personnel to, and the functioning of, ORA, and this includes the provision of personnel and resources "at a level sufficient to ensure that customer and subscriber interests are fairly represented in all significant proceedings."³ Time is a resource, and if we were to fail to provide adequate time for ORA to participate in a meaningful way in major proceedings such as this one, we would act in contravention of this statutory obligation.

If the final revenue requirement decision were to authorize a base rate revenue requirement increase, the deferred schedule for this case could potentially lead to adverse financial consequences for SCE. Similarly, ratepayers could be harmed by delay if the final decision were to authorize a revenue requirement decrease. The principle question before us is whether to adopt a mechanism that either prevents such consequences from occurring or, at a minimum, mitigates their effects. We answer this question in the affirmative. In the absence of such a mechanism, ratepayers or shareholders might be harmed by procedural delays. Neither outcome strikes us as reasonable, if such outcome

³ Pub. Util. Code § 309.5(c).

is avoidable. We prefer an approach that leaves both ratepayers and shareholders relatively indifferent to the precise date that the final decision is delivered;⁴ reduces incentives for any party to achieve gains that could be realized through delay in the effective date of the proceeding's outcome; and allows sufficient time, for parties as well as decisionmakers, for review and critical analysis of the record. SCE's proposal is consistent with these policy objectives.

As SCE notes, the Commission has a longstanding practice of establishing memorandum accounts to avoid retroactive ratemaking:

It is a well-established tenet of the Commission that ratemaking is done on a prospective basis. The Commission's practice is not to authorize increased utility rates to account for *previously* incurred expenses, unless, before the utility incurs those expenses, the Commission has authorized the utility to book those expenses into a memorandum account or balancing account for possible future recovery in rates. This practice is consistent with the rule against retroactive ratemaking.⁵

⁴ We understand that the proposal mechanism would not leave parties completely indifferent. For example, we are aware of the company's position that a timely decision is needed so that it can prudently plan spending and signal to financial markets that the company is returning to creditworthiness.

⁵ *Southern California Water Co.*, Decision 92-03-094 (March 31, 1992), 43 Cal. P.U.C. 2d 600. See also, *Pacific Gas and Electric Co.*, Decision 02-07-032; (July 17, 2002), 2002 Cal. PUC LEXIS 441:

Generally, it would be retroactive ratemaking to compensate utilities for costs incurred above the revenue requirement, unless a specific memorandum account is set up for that purpose. The Commission has specifically allowed certain memorandum accounts to mitigate the risks for certain costs that are beyond the utilities control.

See also, *Re Southern California Edison Co.*, Decision 99-11-057, (November 18, 1999), 1999 Cal. PUC LEXIS 769:

Footnote continued on next page

This longstanding practice is applicable where we are not engaged in general ratemaking. We determine that we are not so engaged in this proceeding. In contrast to traditional GRCs, which, in another era, constituted general ratemaking, this proceeding covers a reduced scope of Commission determinations and utility functions. For example, the company's authorized rate of return is determined in separate cost of capital proceedings, and various functional areas such as electric transmission costs and procurement-related costs are excluded from this proceeding. Moreover, in this phase of the proceeding we are not addressing the allocation of the revenue requirement among customer classes or the design of rate structures. We note that SCE is seeking authorized base rate revenues for the 2003 test year of approximately \$3.1 billion in this proceeding. By contrast, in SCE's concurrent proceeding to lower retail rates upon full recovery of the Procurement Related Obligations Account (PROACT), the company estimates that the total of its 2003 retail revenue requirement and the associated Department of Water Resources revenue requirement of \$2.2 billion is approximately \$9.0 billion.⁶ In other words, even if SCE's request is fully approved, this proceeding reviews approximately one-

Memorandum accounts were designed to allow utilities the opportunity to record costs incurred prior to the Commission's review of the costs for reasonableness. In order to carry out its ratemaking duties fairly and orderly, the Commission has decided to parallel the prohibition against retroactive ratemaking by requiring that the establishment of a memorandum account not be retroactive. That is, the memorandum account can start to record debits or credits only prospectively from the date the account is authorized. In that way, if recorded costs are subsequently approved for recovery in rates, there will be no confusion or entanglement of issues regarding retroactive ratemaking.

⁶ Application 03-01-019, Exhibit SCE-1, Table II-2 and Appendix A.

third of the total revenue requirements being paid by SCE's bundled service customers.

Under SCE's proposed GRC RRMA mechanism, any memorandum account undercollection would be transferred to SCE's Settlement Rates Balancing Account for eventual recovery from customers if the final revenue requirements decision is issued before SCE recovers the PROACT balance. If the final decision is issued after full PROACT recovery, then any memorandum account undercollection would be recovered in rates directly. Aglet contends that this inappropriately transfers the risk of procedural delays to ratepayers. Therefore, in the event that we approve SCE's request to establish a memorandum account, Aglet proposes that we deny the rate recovery provisions of SCE's proposal without prejudice, and permit SCE to make a future showing that rate recovery is justified.

Our primary consideration in determining whether to approve SCE's proposed memorandum account and related rate recovery provisions is to advance our previously stated policy objectives of holding both utility shareholders and ratepayers harmless for any required procedural delays in this proceeding, removing incentives for any party to seek or promote delay, and providing parties and decisionmakers with sufficient time to review and analyze the record. It is our judgment that establishment of the memorandum account alone will further these objectives, and that SCE's proposed rate recovery provisions are premature. We will therefore approve the memorandum account, and address the disposition of the memorandum account balances when we issue our decision on SCE's base rate revenue requirement.

4. Draft Decision

The ALJ's draft decision was issued pursuant to Public Utilities Code Section 311(g). Pursuant to Rule 77.7(b) of the Rules of Practice and Procedure, parties were permitted to review and comment on the draft decision.

5. Assignment of Proceeding

This matter is assigned to Commissioner Wood and ALJ Wetzell.

Findings of Fact

1. The Rate Case Plan is not an entitlement that guarantees utilities immunity from any adverse effects of procedural delays.
2. Failure of the Commission to provide adequate time for ORA to participate in a meaningful way in this proceeding would be in contravention of the statutory obligation set forth in Pub. Util. Code Section 309.5(c).
3. SCE's proposes a memorandum account to offset the financial consequences of the difference between the date the Commission adopts its final decision in this proceeding and the date that the decision would have been expected under the Rate Case Plan.
4. SCE's proposed memorandum account is consistent with our objectives to leave both ratepayers and shareholders essentially indifferent to the precise date that the final decision is delivered; remove incentives for any procedural gaming that might be attempted if gains could be realized through delay; and allow sufficient time, for parties as well as decisionmakers, for review and critical analysis of the record.
5. SCE's proposal to determine the balance in the memorandum account and either transfer said balance to the Settlement Rates Balancing Account or recover said balance through applicable rate components is premature.

6. In contrast to traditional GRCs, which, in another era, constituted general ratemaking, this proceeding covers a reduced scope of Commission determinations and utility functions.

Conclusions of Law

1. SCE's proposed memorandum account will enable the Commission to strike a fair balance of shareholder and ratepayer interests when it issues its decision on SCE's base rate revenue requirement.

2. SCE's motion should be granted to the extent set forth in the following order.

3. SCE's proposal to determine the balance in the memorandum account and either transfer said balance to the Settlement Rates Balancing Account or recover said balance through applicable rate components should be dismissed without prejudice.

4. The authorization granted herein does not bind the Commission to grant the requested revenue requirement, or any portion thereof, as such a grant can only be made upon the development of a complete evidentiary record, and full and fair consideration of the record by the Commission.

O R D E R

IT IS ORDERED that:

1. The motion of Southern California Edison Company (SCE) for authority to establish a memorandum account and for related rate recovery is granted to the extent set forth in Ordering Paragraph 2, and is otherwise dismissed without prejudice.

2. SCE is authorized to establish a memorandum account to track the revenue requirement that it has requested in this application during the period between May 22, 2003 and the date a final decision on that request is adopted in this proceeding.

3. Within 10 days of the effective date of this order, SCE shall file revised tariff sheets to implement the memorandum account and related rate recovery provisions authorized herein. The revised tariff sheets shall become effective upon filing, subject to a finding of compliance by the Energy Division, and shall comply with General Order 96-A.

This order is effective today.

Dated _____, at San Francisco, California.